

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 309 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

(No. 1 to 5 NO)

STATE OF GUJARAT

Versus

GOSAI HARPRASHADGIRI

GANAPATGIRI

Appearance:

MR. K.C. SHAH, LD. PUBLIC PROSECUTOR for Petitioner

MR PM THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 04/08/97

ORAL JUDGEMENT

The Respondent accused came to be convicted for the offence punishable under section 409 and 477A I.P. Code, and came to be sentenced to the S.I. for two years, and to a fine of Rs.500-00; in default to the further S.I. for two months and to the S.I. for two years, and to a fine of Rs.500-00; in default to further S.I. for three months, by the Ld. Chief Judicial

Magistrate, Amreli in C.C. No. 407 of 1987 under orders dated May 31, 1988. The Criminal Appeal No. 18 of 1988 filed by the Respondent accused came to be allowed by Ld. Sessions Judge, Amreli, under his orders dated January 25, 1990, and the Respondent accused came to be acquitted. The State has filed the present Appeal. The charge against the Respondent accused was that, during the period from October 21, 1985 to June 05, 1986, he was working as Nazir at Civil Court (S.D.) Amreli, and during that period he had made false entries in the Court record and had defalcated an amount of Rs.4867-44. According to the case of the prosecution the husband of prosecution witness Jituben, PW-5, Exhibit-58 had expired and later on the case for Workman's Compensation was filed and the amounts going to her minor children were invested in the Fixed Deposit Account of a local bank, and she was being paid quarterly interest, but that the Respondent accused though had obtained the amount from the bank, had not made any payment to Jituben.

Ld. Chief Judicial Magistrate was impressed by the fact that, certain entries were not posted in the Court record. Any how, ld. trial Magistrate had overlooked the evidence tendered by Jituben, PW-5, Exhibit-58. Ld. Sessions Judge has taken in to consideration the say of Jituben which is unequivocally clear. She had stated that, she was entitled to quarterly interest and on every occasion she was getting the amount regularly without any difficulty or break. This evidence of Jituben would go to show that the case of the prosecution that certain amounts were received by Respondent accused from the bank and that, the said amounts were not paid to Jituben and the amounts came to be defalcated cannot be accepted. Ld. Sessions Judge in my opinion was perfectly justified in coming to the conclusion that the whole case was being lost in view of evidence of PW-5 Jituben. I do not see any justifiable reason to interfere with the orders of acquittal pronounced by the Ld. Sessions Judge. In my opinion, the present Appeal requires to be dismissed. I order accordingly. The orders of acquittal pronounced by Ld. Sessions Judge, Amreli, are therefore hereby upheld and confirmed, after dismissing the present Appeal of the State.

/vgn.